

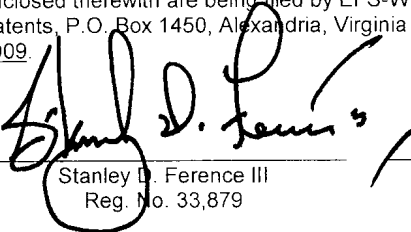
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Srinivasan et al.  
Serial No. : 09/805,336 Examiner : J. Janvier  
Filed : March 13, 2001 Art Unit : 3622  
For : METHOD AND SYSTEM FOR CREATING AND  
ADMINISTERING INTERNET MARKETING  
PROMOTIONS

December 28, 2009

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

I hereby certify that this correspondence and any documents referred to as enclosed therewith are being filed by EFS-WEB with the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on December 28, 2009.

  
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Stanley D. Ference III  
Reg. No. 33,879

December 28, 2009  
Date of Signature

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

Appellants submit the present Reply Brief in response to the Examiner's Answer dated October 26, 2009. Please note the fact that December 26, 2009, fell on a Saturday ensures that this paper is timely filed as of today, Monday, December 28, 2009 (the next succeeding day which is not a Saturday or Sunday).

### **SUMMARY**

In the Examiner's Answer the Examiner maintains the rejections of the pending claims. Claims 1-21 stand rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Claims 1-21 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson (U.S. Patent No. 5,918,014; hereinafter Robinson). Claims 1-21 stand further rejected under 35 U.S.C. § 103(a) as being unpatentable over Lipsky (U.S. Patent No. 7,031,932; hereinafter Lipsky). This Reply Brief addresses the arguments set forth in the Examiner's Answer in response to Appellants' Appeal Brief.

#### **Claims 1-21 are directed toward patentable subject matter**

Independent claim 1 recites, *inter alia*, an Internet website and an Internet merchant. *Specification*, Claim 1. In response to Examiner's remarks, Applicants respectfully submit that these elements are not "nominal recitations," and, therefore, the claim is not related to "mental processes," as asserted by the Examiner. *Examiner's Answer*, pp. 3 (grounds of rejection for claims 1-21 under 35 U.S.C. § 101) and 17. To the contrary, these claim elements are integral to the function of the instant invention.

An Internet merchant is an eCommerce site operator, such as Amazon.com, which through an integrated system comprised of "different kinds of hardware and software sub-systems" conducts commerce over the Internet. *Specification*, [0004-0005], [0038], [0041]. Examples of sub-systems include Application Servers which provide promotion content data, and the manager's console system that executes software to display sample and experiment data of the instant invention. *Specification*, [0046-0047], [0049]. An Internet website is generated and delivered to users through a Webserver running

appropriate software. *Specification*, [0042]. A Webserver receives and processes user webpage requests and also may generate webpages through data collected from sources such as software programs or Application Servers. *Specification*, [0042], [0046]. Thus, the subject matter of claim 1 consists of hardware and software components. As such, contrary to the Examiner's assertions, claim 1 is not a mere mental process.

In addition to an Internet website and an Internet merchant, claim 1 also recites presenting varied promotions to Internet website visitors and dynamically determining optimal promotions through real-time sample data analysis. *Specification*, Claim 1. Varied promotions may be presented to Internet website visitors by presenting different versions of the Internet merchant's webpage to different visitors. *Specification*, paragraph between [0074] and [0075] (misabeled as [0010]). In one embodiment, optimal promotions are determined in real-time by optimizing an economic variable, such as profit or revenue, and running continuous real-time models on sample data in connection with interfacing to an accounting system to maximize the economic variable in real-time. *Specification*, [0076-0079]. Thus, the subject matter of claim 1 consists of hardware and software components. As such, contrary to the Examiner's assertions, claim 1 is not a mere mental process.

During prosecution, pending patent claims are given the broadest reasonable interpretation. MPEP § 2111. However, the broad interpretation must also be "consistent with the specification." MPEP § 2111; *See Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (broadest interpretation in view of the specification). The Examiner contends that the limitation in claim 1 of presenting promotions to Internet website visitors could be interpreted broadly to include manually printing and mailing,

via the U.S. Post Office, the promotional material to said visitors. *Examiner's Answer*, p. 17. There is no support for this interpretation in light of the Specification as interpreted by one of ordinary skill in the art. Throughout the specification, it is clear that the promotions are delivered to Internet website visitors. For example: "promotions may be designed and implemented without need for human intervention," (*Specification*, [0024]), "once the customer has accessed the eCommerce website, he can request information, such as current promotions, from the website," (*Specification*, [0040]), and "it is possible to present different prices to different online customers" (*Specification*, paragraph between [0074] and [0075] (incorrectly labeled as [0010])).

In addition, the Examiner broadly interprets the claim 1 limitation involving displaying optimal promotions to an Internet merchant does not necessarily involving an interface or an Internet website. *Examiner's Answer*, p. 17. There is no support for this interpretation in light of the Specification as interpreted by one of ordinary skill in the art. Throughout the specification, it is clear that the optimal promotions are displayed to Internet merchants through a computer interface, such as an Internet website or local software application. For example: "the present invention allows for designing and administering Internet promotions via a website," (*Specification*, [0023]) and "[t]he manager's console [] contains software...for displaying output from the inventive system," (*Specification*, [0049]). Thus, the Examiner's interpretation of the presenting promotions to Internet website visitors and displaying optimal promotions to an Internet merchant limitations is overly broad and is not supported by the specification.

**Claims 1-21 are not obvious in view of Robinson or Lipsky**

Applicants respectfully submit that the “...latter bold portion simply represent[ing] the Examiner’s understanding of the argued limitation if the claimed invention were to be implemented by an ordinary artisan...” , *Examiner’s Answer*, page 20, is incorrect and not supported by substantial evidence. Evidence to the contrary is found throughout the specification, particularly at page 4, lines 8-15 (¶ [0011]).

Regarding claim 7, addressed in the Examiner’s Answer at pages 22-23, Applicants respectfully submit that this is particularly exemplary of the Examiner’s misreading of the claim language. Claim 7 recites, *inter alia*:

A method of dynamically determining an optimal promotion to be offered on an Internet website operated by an Internet merchant, comprising: (a) receiving configuration data from the Internet merchant, wherein such configuration data **comprises: a sample size of visitors to the Internet website who are to participate in an experiment**, and time-related information concerning the experiment; (b) **randomly choosing visitors to the Internet website to comprise a sample of visitors to participate in the experiment according to the configuration data**; (c) running the experiment according to the configuration data **on the randomly chosen sample of visitors to produce sampling data**, wherein the experiment comprises: presenting a plurality of varied promotions to different visitors within the sample according to the configuration data; and measuring the effectiveness of the plurality of varied promotions on the sample; (d) dynamically determining an optimal promotion using real-time analysis of the sampling data from the experiment, wherein the optimal promotion optimizes at least one economic variable selected from a group of economic variables; and (e) thereafter displaying the optimal promotion to the Internet merchant... **wherein said configuration data includes a minimum basket size for receiving a promotion.**

Claim 7 (emphasis added). Thus, Applicants respectfully submit that the visitors are “randomly chos[en]” to comprise a sample, not that they are completely random and can in no way interact with the website (for example, purchase products). Claim 7. Once the optimal promotion is identified, the merchant has the option of only offering it to visitors having “a minimum basket size for receiving a promotion”, whether these particular

visitors were randomly chosen to be in the sample (to determine the optimal promotion) or not. Claim 7. Applicants respectfully submit that the specification makes this claim language clear. Thus, Applicants respectfully submit that neither Robinson nor Lipsky teach or suggest this claim.

Regarding claim 8, addressed in the Examiner's Answer at pages 24-25, Applicants respectfully submit that this is also particularly exemplary of the Examiner's misreading of the claim language. Claim 8 recites, *inter alia*:

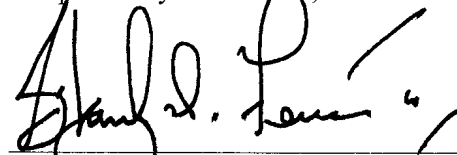
...wherein the determining step further comprises: when the optimal promotion is determined to lie between two tested promotions, the optimal promotion is allowed to lie between the two tested promotions, wherein an interpolating function is utilized to automatically determine the optimal promotion displayed to the Internet merchant.

Claim 8. Applicants respectfully disagree that this wherein clause "...constitute[s] at best a matter of desires or non-functional and non-descriptive material." *Examiner's Answer*, page 24. First, this contention is rather unclear to Applicants. Second, the specification makes clear exactly what this wherein clause means, especially to those having ordinary skill in the art. To wit: "[i]n an alternative embodiment, the promotion to be offered is not necessarily one of the tested promotions  $p_1, \dots p_n$  but is allowed to lie between two tested promotions. In this case, the appropriate maximization may be performed by using an interpolating function." *Specification*, page 20 ([0094]). In other words, if a promotion of \$1 is tested, and a promotion of \$2 is tested, an interpolating function can be used to identify the optimal promotion between these two tested values. Applicants respectfully submit that neither Robinson nor Lipsky teach or suggest this claim.

**CONCLUSION**

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief, the Appellants maintain that the pending claims were improperly rejected as being directed toward unpatentable subject matter under 35 U.S.C. § 101 or unpatentable under 35 U.S.C. § 103(a). Appellant respectfully requests that the Board of Appeals reverse the final rejections of the pending claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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